1979

Intergenerational Transfers And Estate Planning: The Iowa Experience

Michael Boehlje
Iowa State University

William Good
Iowa State University

Neil Harl
Iowa State University

John Achterhof
Iowa State University

Intergenerational Transfers And Estate Planning: The Iowa Experience

Abstract
Both state and federal governmental agencies impose taxes upon the transfer of property or wealth at death or as gifts during lifetime. Transfer taxation is justified on at least four grounds: to restrict a person's right to dispose of property at death or during life, to restrict the acquisition of wealth by way of bequests, to achieve a more equal distribution of wealth, and to tax property accumulations that have escaped taxation as income.

Disciplines
Estates and Trusts | Income Distribution | Real Estate | Taxation

INTERGENERATIONAL TRANSFERS AND ESTATE PLANNING: THE IOWA EXPERIENCE

by

Michael Boehlje, William Good,
Neil Harl and John Achterhof

No. 75

INTERGENERATIONAL TRANSFERS AND ESTATE PLANNING: THE IOWA EXPERIENCE

by

Michael Boehlje, William Good,
Neil Harl and John Achterhof*

I. Introduction

Both state and federal governmental agencies impose taxes upon the transfer of property or wealth at death or as gifts during lifetime. Transfer taxation is justified on at least four grounds: (1) to restrict a person's right to dispose of property at death or during life, (2) to restrict the acquisiton of wealth by way of bequests, (3) to achieve a more equal distribution of wealth, and (4) to tax property accumulations that have escaped taxation as income.[1/]

Federal death tax legislation in the U.S. was sporadic until 1916. During the periods of 1797 to 1802, 1862 to 1870 and 1898 to 1902, one type of legacy duty or another was enacted.[2/] In 1916, the original legislation upon which the present federal estate tax is based was established.[3/] Changes in tax rates, exemption levels and deductions have been enacted since then, but the basic structure of the law remained largely unchanged until the Tax Reform Act of 1976.[4/] The 1976 legislation dramatically changed the conceptual base for federal taxation of property transfers.

---

*Professor, Department of Economics, Iowa State University; Member of the Iowa Bar and of the firm Johnson, Burnquist, Erb, Latham & Gibs, P.C.; Charles A. Curtiss Distinguished Professor in Agriculture and Professor of Economics, Iowa State University and Member of the Iowa Bar; and former Graduate Assistant, Department of Economics, Iowa State University, respectively.

Iowa had a less well-developed transfer tax structure than other states in the early 1900's, but made substantial changes beginning in the early 1920's.[5/] In a general revision of the tax statutes in 1921, the state adopted a progressive inheritance tax on both lineal and collateral heirs, and the list of taxable transfers was extended to include powers of appointment, property held in joint tenancy and insurance purchased by the decedent on his or her own life whether or not it was payable to the estate. The 1921 law also added a tax credit on prior transfers covering property which passed through an estate for the second time within two years.[6/] In a second revision made eight years later, a contemplation of death clause was implemented with a rebuttal presumption that transfers within two years of death were in contemplation of death, and the reservation of income in whole or in part was made taxable for inter-vivos transfers.[7/] By the time Iowa had legislated a supplementary estate tax in 1929, the state had evolved a set of death taxes which was comparable in precision with those found in other states. Further adjustments in rate structure and exemptions have occurred since 1929, including the revisions concerning the treatment of joint tenancy property in 1974.[8/] In essence, however, Iowa inheritance tax law has maintained a consistent conceptual base since the 1929 legislation.

Recent changes in both federal estate and Iowa inheritance tax laws along with increasing estate sizes due to inflation suggest that estate plans should be reviewed carefully to determine whether they are consistent with current transfer objectives and the "new rules". The objectives of this article are twofold: (1) to discuss the key issues to consider in developing an estate plan in this new environment, and (2) document

(using a survey of probated estates in Iowa) the use of various estate planning tools and techniques in Iowa and the characteristics of the decedents who chose alternative estate planning procedures.

II. Data Collection

The most desirable estate planning technique(s) to use for a particular decedent depends upon the characteristics of the decedent and his or her family, the characteristics of the estate (size and asset composition), the treatment of various plans and property by the tax laws, and the probate and legal procedures of the particular state which influence the settlement and distribution process. To gather data on characteristics of decedents and property, a sample of all estates in the state of Iowa that were probated in 1972 was obtained. The probate files were examined using a questionnaire developed for that purpose.

There are three purposes for probating an estate: (1) to determine distributive shares as among the heirs (in intestate estates) or beneficiaries (in testate estates), (2) to obtain clear title to the property by providing a procedure for creditors' claims to be presented and paid, and (3) to value the property and pay federal and state death taxes. In Iowa, a choice of methods of probating an estate is possible. Regular or "long-form" probate is used when all three of the above purposes are to be accomplished.[9/] Short-form or clearance from inheritance tax (C.I.T.) may be used when there is little or no question concerning distribution and title of the property involved.[10/] Generally, in C.I.T. cases, few, if any, taxes are due. Furthermore, the cost for a C.I.T. proceeding is generally less than for "long-form" probate, and the time acquired for probate is greatly reduced with the C.I.T.[11/] A third probate procedure became available for small estates after this study was initiated.[12/]

The sample of estates used in the study was structured by the Iowa State University Statistical Laboratory to be representative of the entire state. The counties included in the sample were Allamakee, Winneshiek, Black Hawk, Cerro Gordo, Calhoun, Carroll, Hamilton, Marshall, Emmett, O'Brien, Woodbury, Pottawattamie, Mills, Jasper, Polk, Adair, Lucas, Linn, Clinton, Appanoose, Jefferson, and Des Moines. The survey was completed in the summer of 1974. Essentially, the survey procedure involved selecting one of every eight probate files for the year 1972. Because of the interest in large estates, all estates with taxable values of $130,000 or more were designated as "large" estates and every large estate selected in the manner above was retained in the sample. For estates below $130,000, every third probate file was retained for compilation. In total, the sampling procedure resulted in identification of 968 probate files. Because of the survey procedures used, the results are statistically reliable and can be used to develop an accurate assessment of intergenerational transfers and estate planning in Iowa. Note that the data were obtained from probate files rather than from a survey of Iowa residents. Thus, in cases where death may have been imminent, changes in the will, property ownership and other dimensions of the estate plan may have been made and are included in the survey that are not representative of other individuals in a particular age, occupational or wealth category for whom death is not imminent. However, any bias introduced by this phenomena is expected to be insignificant.

Specifically, data were obtained from probate files on the following:

I. Characteristics of the Decedent

1. Sex and Age
2. Date of Death

3. Marital Status

4. Size of Estate

II. Characteristics of the Beneficiaries

1. Relationship of Beneficiaries

2. Amount of property received by beneficiaries

III. Characteristics of probate

1. Type of fiduciary (individual or institutional)

2. Bond for fiduciary

3. Type of administration

4. The will, if any

5. Length of probate

6. Costs of Probate

IV. Characteristics of Estate Plans

1. Will

2. Trusts and life estates

3. Joint tenancy

4. Life insurance

These data provide the base for the following discussion of the estate transfer and planning process in Iowa.

III. Description of the Probate Data

A. Characteristics of the Decedent

Sex and Age. Of the estates sampled, 58.2 percent of the decedents were male, 40.6 percent were female. Sex was not listed for 1.2 percent of the decedents. The average age of the decedents was 72.1 years while the surviving spouses' average age was 65.7. The distribution of ages is shown in Table 1.

Date of Death. Estates which are probated within a specific year may contain decedents who may not have died recently.[13/] For the estates in the sample (estates probated in 1972) at least one of the decedents died as early as 1939. Table 2 gives an indication of the time span of the deaths which the sample covered.

Marital Status. Of the decedents for which information was gathered, 44 percent were not married and 56 percent were married at the time of death. Of the nonmarried decedents, 74 percent were widows or widowers, 22 percent were single and 4 percent were divorced.

Size of Estate. With respect to estate size, 94 percent of the estates had taxable values less than $130,000 and 6 percent had values greater than $130,000.

B. Characteristics of the Beneficiaries

Table 1. Age distribution of decedent

Age group	Small Estates		Large Estates	
	Number	Percent	Number	Percent
0-20 years	5	0.7	0	0
21-40	20	2.7	1	0.6
41-60	92	12.2	24	15.9
61-80	372	49.4	65	43.1
81 & over	196	26.0	54	35.8
Legal age	68	9.0	7	4.6
Total	753	100.0	151	100.0
Not listed	61		3	

Table 2. Year of death of decedent

Age Group	Small Estates		Large Estates	
	Number	Percent	Number	Percent
Before 1950	1	.1	0	0
1950-1959	23	2.9	0	0
1960-1969	97	12.3	6	3.9
1970	36	4.6	7	4.6
1971	105	13.3	19	12.4
1972	529	66.9	121	79.1
Sub total	791	100.1	153	100.0
Not listed	23		1	

Relationship. The distribution of beneficiaries of the estate is detailed by Table 3. As would be expected, slightly more than 50 percent of the decedents had a spouse as beneficiary. Fifty percent of the estates had no children as beneficiaries. The number of estates with children of the decedent receiving all or part of the estate ranges from 14 percent for estates with one child to 2 percent with six children. Other lineal descendents or parents received bequests only in 8.3 percent of the estates. In 16.2 percent of the estates, one or more relatives other than the spouse, children or lineal descendents and parents were beneficiaries. Non-relative beneficiaries inherited in only 3.3 percent of estates. Finally, only in 4.3 percent of the estates did charities receive bequests; 1.2 percent of the estates had three or more charities as recipients.

Distribution of Property. Table 3 demonstrates that estates are typically divided among numbers of the immediate family, that is, spouse and children. Yet even though non-related individuals and charities are rarely beneficiaries, lineal descendents such as grandchildren or parents as lineal ascendants and "other relatives" are frequent recipients. Thus, if the estate does not go to the immediate family, it is most likely bequeathed to a relative.[14/]

Table 3. Number of beneficiaries by relationship to decedent

Number of beneficiaries	Relationship of beneficiary to decedent					
	Spouse	Children	Lineal descendent or parent	Other relative	Non-relative	Charities
	----------	----------	----------	%----------	----------	----------
0	43.4	50.3	90.8	83.5	96.3	95.3
1	56.6	14.0	2.9	5.0	0.7	2.1
2	--	13.2	1.9	2.4	0.9	1.0
3	--	8.0	1.5	2.3	0.3	0.3
4	--	5.0	0.7	1.3	0.1	0.2
5	--	4.4	0.1	1.5	0.0	0.0
6	--	2.0	0.0	0.3	0.2	0.0
Over 6	--	2.8	1.2	3.4	1.1	0.7
TOTAL	100.0	99.7	99.1	99.7	99.6	99.6

Table 4 demonstrates that of all estates, spouses received 80 percent or more of the property in 37 percent of the estates, while children received 80 percent or more in 30 percent of the estates. With respect to other recipients, only "other relatives" received any significant amounts from the estates. Spouses and children received large bequests as a rule while lineal relatives, non-relatives and charities received only small shares of the estates as bequests.

These data infer that not only are spouses and children most likely to be beneficiaries, but they are also most likely to receive the bulk of the estate. These results suggest that the wealth after costs and taxes remains largely within the family.

Table 4. Amount of estate received by beneficiaries

Amount received as a percentage of net taxable estate	Relation of beneficiary to decedent					
	Spouse	Children	Lineal decedents or parents	Other relatives	Non-relatives	Other
	----------%----------					
1-20	0.0	0.8	1.6	0.7	0.7	2.6
21-40	0.5	0.4	0.6	0.3	0.1	0.0
41-60	0.3	0.7	0.2	0.1	0.2	0.0
61-80	0.4	1.1	0.1	0.1	0.1	0.1
81-100	37.0	29.9	2.0	10.7	0.4	0.0
No beneficiary or none received	61.5	66.8	95.2	87.9	98.3	97.4
TOTAL	99.7	99.7	99.7	99.8	99.8	100.1

C. Characteristics of Probate

Fiduciary. The fiduciary is considered to be an executor if appointed by the court to administer a testate estate or an administrator if appointed by the court to administer an intestate estate.[15/] Table 5 shows the status of fiduciaries in the sample. There is a marked difference between large (greater than $130,000 taxable value) and small (less than $130,000 taxable value) estates; executors were appointed in 93 percent of the large estates, but in only 50 percent of the small estates. This does not necessarily mean, though, that one half of all decedents with small estates died without a will or failed to nominate an executor in the will. Since a large percentage of small estates utilize the short-form probate procedure, many executors nominated by decedents may not have been appointed simply because no fiduciary was necessary.[16/] Table 5 does indicate, however, that of those estates appointing a fiduciary, a larger percentage of small estates failed to utilize an executor.

Table 5. Status of fiduciary

Status of fiduciary	Small Estates		Large Estates	
	Number	Percentage of Sub-total	Number	Percentage of Sub-total
Executor[a]	388	50.3	140	93.3
Administrator	150	19.4	6	4.0
Trustee	3	0.3	1	0.6
Other[b]	230	29.8	3	2.0
Subtotal	771	100.0	150	100.0
Not listed	43		4	

[a]Note that for small estates, 344 wills were admitted to probate, but 388 executors were appointed. Apparently, in some of the estates using C.I.T. probate procedures, the person nominated in the will who was helping settle the estate was designated by the attorney in the Probate Inventory as an executor even though not appointed by the court.

[b]A number of estates (207 small and 3 large) utilized C.I.T. probate procedures and are included in this category.

Bond for Fiduciary. The fiduciary may or may not be bonded.[17] Of the 968 sampled estates, 174 fiduciaries were bonded with bonds ranging in size (for those who listed a value) from $100 to $150,000. The weighted average of all bond values in the sample was $8,539.68 with a median of $3,250.00. Bonds appear to serve more as a formality than a precaution against financial loss as indicated by their small average size in relation to the total size of the estate. Also, the distribution of sizes of bonds shown in Table 6 indicates that bonds for fiduciaries are more frequent among the smaller estates. Perhaps this reflects a failure of many decedents with small estates to waive the bonding requirement in their wills or to be aware that the distributees could request that no bond be required after death.[18]

Table 6. Size of bond posted by fiduciaries.

Dollar amount of bond	Small Estates		Large Estates	
	Number	Percent of Those Bonded	Number	Percent of Those Bonded
1-1999	23	32.8	1	12.5
2000-3999	15	21.4	0	0
4000-5999	11	15.7	0	0
6000-7999	2	2.8	0	0
8000-9999	3	4.2	0	0
over 10,000	16	22.8	7	87.5
Total	70	99.7	8	100.0
Bond but no value given		96		
Estate is open		8		
No bond		786		

Type of Administration. As indicated earlier, three types of administration are possible for an estate, clearance from inheritance tax, regular administration and small estate settlement.[19] The latter was enacted since 1972, and, therefore, does not appear in the data from this study. Of the other two methods, table 7 indicates the frequency each is used for both large and small estates. Regular administration is the method chosen for practically all large estates, while small estates used this method in approximately two-thirds of the cases.

Table 7. Method of Probate

	Small Estates		Large Estates	
Type of administration	Number	Percent	Number	Percent
Regular administration	394	65.5	120	97.5
C.I.T.	207	34.4	3	2.4
TOTAL	601	99.9	123	99.9
Not listed and/or not applicable[a]	213		31	

[a]If the estate had answered yes to regular administration but gave no answer to C.I.T., its lack of response was listed as not applicable and/or not listed. However, many of those who answered yes to regular administration may have felt that the C.I.T. question did not then apply. If this is true, then the percentage of those using regular administration would be larger.

If C.I.T. administration is used, the estate may pass by four different ways, by "admission of will to probate without present administration",[20] by rules of intestacy[21], by the right of survivorship of joint tenancy[22], or by transfer by deed prepared during life and effective to transfer property interests.[23] The estates which used C.I.T. administration are broken down

by type of transfer in Table 8. For small estates, joint tenancy with right of survivorship is shown as being more widely used with intestacy next. Transfer by will not subject to present administration and transfer by deed were utilized the least. Since only three large estates employed C.I.T. administrations, little can be said concerning their choice of transfer methods.

Further analysis of the data indicates a significant relationship between the type of administration used and the number of beneficiaries of the estate. For those estates that used regular administration, the beneficiaries of the estate totaled 3.4. In contrast, only an average of 1.5 beneficiaries were recipients of property when C.I.T. administration was utilized. Thus, with more beneficiaries and more potential disagreement concerning property distribution and ownership, regular rather than C.I.T. administration procedures are used.

Will. A will plays an important role in the probate of an estate. Not all wills are admitted to probate, for if the beneficiaries agree, the will need not be probated.[24/] Both small and large estates demonstrated a high frequency of wills, especially large estates (See Table 9). For small estates, 344 of the 498 wills were admitted to probate; in large estates 116 of the 142 wills were admitted to probate. Note that a higher percentage of large estates admitted wills to probate (82 percent) compared to small estates (69 percent).

The age of a will is often used as one indication of the quality of a decedent's plan--the newer the will the better is assumed to be the estate plan. Rising property values and changing tax laws are but two factors which suggest the importance of a regular view of estate plans. Failure to recognize and accommodate these changes as well as changing family characteristics can result in an estate plan which no longer

Table 8. Methods of property transfer for C.I.T. administrations

Method of transfer[a]	Small Estates		Large Estates	
	Number	Percent	Number	Percent
Probate without Present Administration	14	6.7	0	0.0
Intestate	32	15.5	2	50.0
Joint tenancy	151	72.8	1	25.0
Transfer by deed	10	4.8	1	25.0
Total	207[a]	99.8	4[a]	100.0

[a]Only one large estate listed more than one method; thus, the subtotal is four rather than three. No small estates listed more than one method. It would seem quite conceivable that some small estates would use more than one method of property transfer, e.g. joint tenancy and intestacy, or joint tenancy and probate without present administration. However, since only one method was listed for each small estate, it appears that the common practice is to list only the predominant method of property transfer on the probate inventory.

Table 9. Incidence of Death Testate and Intestate

Incidence of Death	Small Estates		Large Estates	
	Number	Percent	Number	Percent
Testate	498	62.9	142	92.8
Intestate	293	37.0	11	7.1
Total	791	99.9	153	99.9
Not listed	23		1	

fulfills the decedent's objectives.[25/] Among the wills created by the decedents, the average year a will was executed was 1963, while the most frequent year of execution was 1970. This means the average age of a will probated in 1972 was nine years but the largest number of wills were two years old. Table 10 indicates a wide dispersion of ages of wills. The frequency distribution is skewed as expected with a higher proportion of recent wills. However, over one-third of the wills listed were ten years old or older.[26/] The relationship between net taxable estate and the existence and admittance of the will to probate is also of interest. The average net taxable estate for estates that included no will totaled $31,108. For those estates that included a will, but it was not admitted to probate, the net taxable estate average $44,394. Finally, in those estates where the will was admitted to probate, the net taxable estate averaged $58,302. Thus, there appears to be a significant relationship between estate size and use and admittance of the will with larger estates admitting the will to probate and smaller estates either not admitting the will to probate or having no will.

Table 10. Distribution of wills by year of creation

Year of Will	Small Estates		Large Estates	
	Number	Percent	Number	Percent
Earlier than 1948	19	4.2	2	1.4
1948-1952	28	6.2	5	3.5
1953-1957	40	8.9	8	5.6
1958-1962	76	17.0	21	14.8
1963-1968	124	27.7	36	25.5
1969-1972	160	35.7	69	48.9
Total	447	99.7	141	99.7
Not listed	51		1	

Length of Probate. The period of time an estate is open varies greatly among estates and by type of administration. For C.I.T.'s, no time span was recorded, since only one form[27/] is normally filed unless taxes are due. The file is then closed with the receipts for the payment received. Regular probate of an estate may take one year or less[28/], but due to extraordinary reasons it may be kept open longer.[29/] The average length the estate was open in the sample was 15 months with the most frequent closing date 8 months after the decedent's death. From Table 11 it can be seen that 50 percent of the estates sampled were closed within one year and 90 percent within two years.

An analysis of the average length of probate by estate size indicates that the probate process consumes more time with large estates. For example, for taxable estates of less than $50,000, the length of probate averaged 14.7 months. In contrast, estates that include in excess of $400,000 of taxable property required an average of 24.2 months to complete probate.

Table 11. Length of probate of estates

Length of probate in months	All estates large and small	
	Number	Percent
0-12	241	49.9
13-24	235	41.2
25-36	35	6.1
37-48	6	1.1
over 48	9	1.7
Subtotal	526	100.0
Open, not listed or C.I.T.	442	

Attorneys and Fiduciary Fees. Major costs incurred in the probating of an estate are the fees paid to the attorney and the fiduciary. These fees are each regulated by the Iowa Code to not exceed 6% of the first $1,000 of gross assets for Iowa inheritance tax purposes, 4% of the gross assets greater than $1,000 and less than $5,000 and 2% of gross assets in excess of $5,000.[30/] In addition, a procedure is available to obtain additional fees with court approval for extraordinary services required in the settling of the estate such as the sale of real estate or litigation of disagreements among the heirs.[31/] Of the probate files reviewed 440 included a summary of the attorney's fees and 446 a summary of the fees in the final report and discharge of the fiduciary.[32/] It should be noted that this accounting for attorney and fiduciary fees can be waived with the approval of the heirs.[33/]

The distribution of actual fees paid to the fiduciary and attorney is summarized in Table 12. Note that in excess of 50 percent of the fiduciaries received no fee for their services. In only 2 percent of the estates did the fiduciary receive a fee in excess of $5,000, and in only 2.7 percent of the estates did the attorney's fee exceed $5,000.

The attorney and fiduciary fees bear the expected relationship to estate size that is implied by the fee schedule noted earlier as evidenced in Table 13. The relationship between attorneys' fees and estate size suggests that substantial extraordinary fees are not frequently charged in settling estates. Note that the fiduciary's fees are substantially less than the attorney's fees, particularly for the small estates. This difference again demonstrates that the fee is waived and/or not received by many fiduciaries, but the frequency of not paying a fee to the fiduciary declines

as estate size increases. As expected, with large estates such as those with net taxable values in excess of $400,000, the attorney and fiduciary fees comprise a sizeable expense in probating the estate.

IV. Characteristics of Estate Plans

This section considers the role of five devices commonly used in estate planning--wills, trusts, life estate, joint tenancy, and life insurance. The analysis focuses upon the effects certain characteristics of decedents have on the use of these devices.

Table 12. Distribution of Fees Paid to Fiduciary and Attorney

Amount of Total Fee	Fiduciary (%)	Attorney (%)
$ 0	50.5	0.3
1 - 250	10.0	10.6
251 - 500	10.6	25.7
501 - 750	7.4	16.1
751 - 1,000	4.8	9.1
1,000 - 2,000	9.3	21.3
2,000 - 3,000	3.4	10.5
3,000 - 4,000	1.4	2.6
4,000 - 5,000	0.5	1.1
5,000 - 6,000	1.0	1.1
6,000 - 7,000	0.6	0.9
7,000 - 8,000	0.2	0.3
8,000 - 9,000	0.0	0.1
9,000-10,000	0.0	0.0
Over 10,000	0.2	0.3
TOTAL	99.9	100.0

Table 13. Attorney and Fiduciary Fees by Estate Size

Net Taxable Estate	Attorney Fees	Fiduciary Fees
$0 - $49,999	$ 589	$ 234
50,000 - 99,999	1,767	684
100,000 - 149,999	2,586	1,037
150,000 - 199,999	3,779	2,142
200,000 - 249,999	5,054	4,142
250,000 - 299,999	5,353	4,884
300,000 - 349,999	5,959	5,366
350,000 - 399,999	7,287	4,831
400,000 & Over	18,690	15,107
ALL ESTATES	1,230	578

A. Will

i. Purpose

A will is a key feature in the implementation of an estate plan.[34/] With certain limitations, use of a will allows a testator wide lattitude in deciding how to distribute his or her property at death.[35/] The will may include not only provisions for property disposition but also for estate management.[36/] A will can be used to nominate one's personal representative,[37/] to waive bond for fiduciaries nominated in the will[38/] and to modify the statutory powers of fiduciaries.[39/] Moreover, a will may be drafted to effect federal estate tax savings by utilizing the marital deduction[40/] and to effect inheritance tax savings by passing property to beneficiaries who qualify for inheritance tax exemptions and lower inheritance tax rates.[41/]

ii. Use of the Will

Estate Size In Table 14 the use of a will is summarized for small estates, large estates and all estates. Over half of the small estates had a will, while almost all large estates had wills. Since the population of estates consisted mostly of small estates, the statistics for all estates are similar to those for small estates as would be expected. These data indicate the larger the estate, the more likely the owner died testate. The incidence of wills for both small and large estates is higher than anticipated.

Age of Decedent It is often thought that individuals become more concerned with their estate plan as they progress in age, if for no other reason than higher probability of death. Thus, it would seem that as a decedent ages, he or she would be more likely to have a will. Table 15 supports this argument in that there is a definite trend toward the use of wills as the individual grows older.

Table 14. Existence of a will by large, small and all estates

	Size of estate		
	Small estates	Large estates	All estates
	----------%----------		
Testate	62.9	92.8	65.0
Intestate	37.0	7.1	35.0
TOTAL	99.9	99.9	100.0

Table 15. Use of wills by age level

Age of decedent	Percent using wills (%)
"Legal"	45.2
0-20	40.0
21-30	14.3
31-40	32.5
41-50	42.7
51-60	55.9
61-70	65.3
71-80	68.6
81-90	76.7
91 & over	81.3
OVERALL MEAN	65.0

Occupation of Decedent Little can be said about the relationship between a decedent's occupation and his or her will after the age and wealth differences among occupations are taken into account. Retired persons, especially farmers, as well as non-retired farmers, use wills most often. (Table 16). Also, a decedent with a white collar occupation is more likely to have a will than a decedent with a blue collar occupation.

Table 16. Use of wills by occupation

Occupation categories	Percent using wills (%)
Retired	69.2
Retired farmer	72.5
Housewife	61.1
Farmer	68.7
Blue Collar	53.5
White Collar	64.2
OVERALL MEAN	65.0

B. Trusts and Life Estates

1. Purpose

Trusts and legal life estates are considered useful tools in estate planning.[42/] Only testamentary trusts established by the decedents' wills were observed in this study. Neither trusts set up by others in which the decedent had an interest nor inter vivos trusts set up by the decedent appear in the sample of estates examined. This factor should be kept in mind in interpreting the data on the use of trusts and legal life estates.

A testamentary trust can have many uses. A trust may be included in the will to come into existence upon the death of the surviving parent if minor children survive. Minors are not considered competent to manage

their property until they are of age.[43] Therefore, children are generally not deemed legally capable of selling, mortgaging or managing property.[44] A testamentary trust may afford considerably more flexibility than a conservatorship under state law.[45]

Testamentary trusts may also be used for marital and non-marital shares created under the will of the first of the spouses to die in order to take advantage of the marital deduction for federal estate tax purposes and to hold limited interests in property in the non-marital share.[46] The amount placed in each share depends on how much balancing is necessary between the spouses' estates in order to accomplish the decedent's tax minimization goals.[47] A trust may also be used for generation skipping.[48] Since property held in a granted life estate is not taxable in the estate of the deceased life tenant for federal estate tax purposes[49], creating successive life estates for family members in succeeding generations may produce tax savings. Although this device is limited by the Rule against Perpetuities[50] and generation skipping rules in the Tax Reform Act of 1976[51], significant estate tax savings may still be obtained within the limits established by the 1976 legislation.[52]

Other characteristics of trusts contribute to their usefulness as estate planning tools. The settlor has considerable flexibility in determining the rules for trust operation and in defining powers of the trustee.[53] Moreover, a substantial body of case law is available to the extent the trust instrument does not provide guidance for trust operation.[54]

Decedents who do not wish to burden their beneficiaries with the task of managing their property can appoint a corporate or individual trustee to do so. Outside assistance is often desirable where the surviving

spouse and/or other beneficiaries have neither the desire nor ability to manage the property. Since a high degree of fiduciary care is imposed on the trustee[55/], protection is afforded the benficiaries.

The trustee can be given very broad or quite limited powers in the trust instrument as to investments and the distribution of income and principal.[56/] Distribution may be for the benefit of one beneficiary or several. Spendthrift provisions[57/] can be incorporated to guard against the transfer of trust income or principal by voluntary act of a beneficiary or a beneficiary's creditors.[58/] Since a trust is treated as a separate entity for income tax purposes[59/], income tax savings to the family group may be afforded as well.[60/]

Legal life estates are sometimes viewed as substitutes for trusts. The marital and non-marital portions of an estate can be administered by use of a legal life estate with a general power of appointment (for the marital portion) or legal life estate (for the non-marital portion). Legal life estates can also be used to effect generation skipping.

Certain characteristics of legal life estates, however, may reduce their utility as a substitute for trusts. For example, problems may be encountered in administering a legal life estate in tangible personal property. This is especially true in the case of property used in a business which is of a depreciable nature and has a relatively short life.[61/]

Potential problems may also accompany a legal life estate in real property. For example, minor remaindermen may create problems, even during the tenure of the life tenant.[62/] Either a conservatorship or trust may be needed when the interests of minors come into possession. Questions concerning the life tenant's use of the property may also arise. Demolition of

a building or cutting timber may, for example, subject the life tenant to charges of waste.[63/] Further questions may arise concerning the power of the life tenant or the remaindermen to mortgage or convey property, to enter into long term leases[64/], to contest the award in a condemnation proceeding, or to settle boundary disputes. The extent of the life tenant's duty to insure the property may also be unclear.[65/]

The body of case law is generally unable to answer many of the above questions with specificity. Thus, a trust can provide more clarity and substantially more flexibility and certainty than a legal life estate unless the granting instrument contains a broad grant of powers.

ii. Use of Trusts and Life Estates

Estate Size and Age of Decedent The frequency of use of trusts and legal life estates categorized by estate size appears in Table 17. This table demonstrates that estates over $200,000 make greater use of trusts while estates less than $200,000 make greater use of legal life estates. Moreover, only individuals over forty years of age (at death) were found to use either trusts or legal life estates (see Table 18). Younger individuals (under forty) at death did not use trusts or legal life estates in their estate plan.

Table 17. Frequency of trusts or legal life estates by estate size

Net taxable estate	Trusts (%)	Legal Life Estates (%)
$ 0- 49,999	1.0	1.0
50,000- 99,999	0.0	5.6
100,000-149,999	2.5	2.5
150,000-199,999	2.0	4.0
200,000-249,999	9.5	0.0
250,000-299,999	0.0	0.0
300,000-349,999	8.3	0.0
350,000-399,999	16.7	0.0
400,000 & over	20.0	0.0

Table 18. Frequency of trusts or legal life estate by age level

Age level	Trusts (%)	Legal Life Estates (%)
"Legal"	1.4	0.0
0-20.	0.0	0.0
21-30	0.0	0.0
31-40	0.0	0.0
41-50	1.1	0.0
51-60	0.5	1.4
61-70	1.5	1.9
71-80	1.1	3.5
81-90	1.1	0.7
91 & over	3.3	3.3

Number of Children and Marital Status The limited number of observations on trusts and legal life estates makes it difficult to obtain statistically valid conclusions. However, the data in Table 19 indicate that the estates of decedents who have no children have a low probability of using a trust, but a higher probability of using a legal life estate. Both trusts and legal life estates have a higher probability of occurring in estates of decedents who have one, two or three children as shown in Table 19. Finally, Table 20 indicates that widows and widowers as decedents utilized trusts to a relatively higher degree, while only married decedents used legal life estates.

Table 19. Frequency of trusts and legal life estates by number of children

Number of children	Trusts (%)	Legal Life Estates (%)
0	0.9	2.7
1	2.2	1.2
2	1.6	2.0
3	1.6	0.0
4	0.0	0.0
5	2.9	0.0
6	0.0	6.5
Over 6	1.5	0.0

Table 20. Frequency of trusts and legal life estates by marital status

Marital Status	Trusts (%)	Legal Life Estates (%)
Married	0.6	3.1
Widow (er)	2.9	0.0
Single	0.0	0.0
Divorced	0.0	0.0
Not married	0.6	0.0

Tables 19 and 20 indicate that legal life estates seem to be preferred to trusts in some instances. This seems contrary to what might be expected in light of the greater flexibility and certainty inherent in the use of trusts but is consistent with the view that trust usage is relatively uncommon in primarily non-metropolitan areas such as Iowa. The tables further demonstrate that neither tool is used to any great extent. This is surprising when considering the many purposes for which they can be used. Even where death taxes are not a consideration, it would seem that providing for a testamentary trust for minors to avoid conservatorship would be desirable. Yet, as shown in Table 18, decedents most likely to have minor children, that is, those between

the ages of 20 and 40, did not use trusts in their estate plans. It is important to remember that the survey only observed testamentary trusts established by the decedent's will.

C. Joint Tenancy

i. Purpose

Joint tenancy with right of survivorship may offer some estate planning advantages, particularly in estates not subject to federal estate and state inheritance taxation. On the death of the first joint tenant to die, it is possible in Iowa for the title obtained by the surviving joint tenant to be perfected by short-form probate proceedings.[66] In the absence of fraud on creditors in creation of the tenancy, neither secured nor unsecured creditors of the deceased joint tenant can reach the joint tenancy property in the hands of the survivor unless the tenancy was severed prior to death or the survivor was jointly liable on the secured obligation.[67] As a "poor man's will", joint tenancy may prevent division of ownership of property between the surviving spouse and minor children via the rules of intestacy.[68]

Estate planning is not, typically, carried out immediately prior to death.[69] Therefore, the estate planner must of necessity deal with the probable size of the estate at death rather than the size of the estate at the time of estate planning in recommending forms of property ownership. Once titles are established, individuals exhibit a decided propensity to leave them unchanged even though the size of the estate may change drastically. Therefore, although joint tenancy may be an acceptable choice for those with smaller estates, it may not accomplish a person's objectives as the estate increases in size. Upward trends in property values accentuate this predictive problem faced by estate planners.

Other factors tend to diminish the attractiveness of this form of property ownership. With each joint tenant granted a right to sever the joint tenancy relationship unilaterally,[70] a joint tenant furnishing consideration for acquisition of the property in effect grants to the other tenant a revocable interest that could be partitioned and severed at any time. Marital difficulties or other discord between the tenants may lead to division of the jointly held property even before divorce or separation. Each tenant has a proxy to amend or destroy the other's estate plan. Joint tenancy property may be severed by a variety of other means, many of which are much less obvious than the example just cited.[71] Thus, if other arrangements are not made, severance of a joint tenancy can seriously alter a person's intended disposition.

The usefulness of joint tenancy as an estate planning device must be further scrutinized when death taxes are a consideration. Joint tenancy offers no particular advantage for federal estate tax purposes. For "qualified joint interests" created after December 31, 1976, involving a husband and wife where the transaction creating the joint tenancy was subject to federal gift tax,[72] half the value is taxed at the death of the first joint tenant to die.[73] Otherwise, the full value of the joint tenancy is subjected to federal estate tax in the first to die except to the extent it can be proved that the survivor contributed to its acquisition. The burden of proving the survivor's contribution is placed on the estate.[74] In many cases, sufficient records or other evidence of payments made years earlier may be difficult to produce.[75]

The survivorship right of joint tenancy precludes use of the life estate-remainder arrangement as to the non-marital portion of the estate

to reduce the death tax burden on the death of the survivor. The entire property passes to the survivor and may be taxed again in his or her estate.

The treatment of joint tenancy property for state inheritance tax purposes at the time of this study (1972) was essentially the same as that for federal estate tax purposes.[76/] Thus, during the period of this study, joint tenancy property was excluded from state inheritance taxes only to the extent that the survivor could prove contribution.

ii. Use of Joint Tenancy

Estate Size and Occupation of Decedent In general, it was found that as estates increase in size, they hold a decreasing amount of property in joint tenancy as a proportion of the total estate as shown in Table 21. Except for the $350,000 to $399,999 category, there is a definite trend to a lower percentage of joint tenancy as estate size increases. No trend, however, can be associated with occupation (Table 22). Decedents in blue collar positions held the highest amount of property in joint tenancy; one half of their estates on the average was jointly owned. White collar workers averaged forty percent of their estates in joint tenancy while farmers owned even less property in joint tenancy, thirty percent for the average.

Table 21. Average amount of property owned by joint tenancy by estate size

Total gross estate levels	Average amount of joint tenancy (as a percent of total gross estate) (%)
$ 0-$49,999	34.7
50,000- 99,999	31.0
100,000-149,999	26.1
150,000-199,999	22.3
200,000-249,999	9.5
250,000-299,999	8.4
300,000-349,999	7.2
350,000-399,999	21.7
400,000-449,999	6.8
450,000-499,999	2.8
500,000 & over	9.3
OVERALL MEAN	32.4

Table 22. Average amount of property owned in joint tenancy by occupation of decedent

Occupation	Average amount of joint tenancy (as a percent of total gross estate) (%)
Retired	37.9
Retired farmer	35.6
Housewife	41.5
Farmer	30.0
Blue collar	49.5
White collar	40.3
OVERALL MEAN	32.4

Age of Decedent, Marital Status and Sex From Table 23, no direct relationship between age at death and use of joint tenancy is observable. Joint tenancy usage is less among those over eighty years of age at death, but that can be explained by the fact that older decedents are more likely to be widows and widowers without a spouse as a joint tenant. The 31-40 years-of-age bracket has by far the highest percentage of joint tenancy which could be associated with a high concentration of joint tenancy home ownership. The effect of marital status on the percentage of joint tenancy is very apparent from Table 24; married decedents owned on the average almost 50 percent of their estates in joint tenancy even though the highest non-married category was almost 16 percent. There also appears to be a difference in joint tenancy by sex of the deceased (Table 25), but this can possibly be explained by the fact females are more likely to be the surviving joint tenant in husband-wife joint tenancies.

Table 23. Average amount of property owned in joint tenancy by age level of decedent.

Age levels	Average amount of joint tenancy (as a percent of total gross estate) (%)
"Legal"	28.5
0-20	0.0
21-30	32.3
31-40	48.0
41-50	39.6
51-60	42.9
61-70	35.6
71-80	35.9
81-90	25.5
91 & over	20.0
OVERALL MEAN	32.4

Table 24. Average amount of property owned in joint tenancy by marital status

Marital status	Average amount of joint tenancy (as a percent of total gross estate) (%)
Married	47.6
Widow	15.7
Single	15.4
Divorced	7.5
Not married	0.1
OVERALL MEAN	32.6

Table 25. Average amount of property owned in joint tenancy by sex of decedent

Sex	Average amount of joint tenancy (as a percent of total gross estate) (%)
Male	36.3
Female	27.2
OVERALL MEAN	32.4

The above data suggest two general observations. First, the trend toward smaller percentages of joint tenancy as estate size increases is consistent with steps needed to reduce federal estate tax liability at the death of the surviving joint tenant. It indicates that individuals with larger estates are focusing their attention on the death tax problems of this form of property ownership. However, the data also suggest that joint tenancy usage viewed as a percentage of the gross estate, is still relatively high overall. For example, as shown in Table 21, 9.3 percent

of the property in gross estates of $500,000 and over is in joint tenancy. With a properly drafted will that reduces the marital share by the amount of jointly owned property included in the gross estate, the effects of joint tenancy can be neutralized, but it indicates a continued need on the part of decedents and estate planners to carefully weigh the advantages and disadvantages of this form of property ownership.

D. Life Insurance

i. Purpose

Life insurance can serve a variety of functions in the estate planning process. Life insurance can be used to create an estate where none might otherwise exist and thus protect those dependent upon an income stream. Unanticipated death of someone on whom others are economically dependent can create serious problems. Death of a young husband with several children typifies the problem situation.

Life insurance may also be used to help solve liquidity problems at death. Death taxes and other settlement costs are usually due within a relatively short time after death[77/] unless installment payment options are utilized.[78/] Special liquidity problems arise where continuation of a decedent's business is a key objective. Erosion of capital to pay the inherited shares of heirs not continuing in the business may seriously jeopardize this goal.[79/]

Other attributes of life insurance deserve consideration. In some instances, life insurance proceeds receive special protection from creditors.[80/] If life insurance proceeds are made payable to a designated

beneficiary, rather than to the estate, probate costs can be reduced.[81/] State inheritance taxes are also reduced if life insurance proceeds are not payable to the estate, since proceeds payable to a designated beneficiary are exempt from Iowa inheritance tax.[82/] If the decedent has no incidents of ownership in a policy, proceeds payble to a designated beneficiary also escape federal estate tax.[83/]

ii. Use of Life Insurance

Beneficiaries of Life Insurance The average amount of life insurance of all decedents was $6,131 or 13.5 percent of their total estates. In Table 26, life insurance is classified by type of beneficiary which determines the tax status of life insurance for state inheritance tax purposes. Forty percent of the estates had life insurance payable to a designated beneficiary, averaging $6,755 in value. Life insurance values ranged from $200 to $362,153. The estate was the only other category of beneficiary receiving life insurance proceeds with substantial frequency. Life insurance proceeds to estates had a range from $87 to $70,893 with an average value of $5,179. Two other categories of life insurance beneficiaries, executor or administrator and trustee, had only one response each in the sample. The last category of beneficiaries is corporations which had four responses ranging from $1,000 to $90,140.

Table 26. Life insurance by type of beneficiary

Beneficiary	Life insurance	
	Average amount of life ins. ($)	Percent of estates having life ins. (%)
Designated beneficiary	6,755	40.0
Estate	5,179	5.0
Executor or administrator	3,042[a]	0.0
Trustees	25,919	0.0
Corporation	27,393	1.0

[a]Only one policy was sampled

These data on ownership and beneficiary designation of life insurance suggest that decedents may be more concerned with reducing state inheritance taxes and probate costs than in providing additional liquidity to the estate. The sample data did not provide information concerning policies on the decedent's life in which no incidents of ownership were retained. Therefore, no inferences can be drawn regarding the extent to which policy ownership was arranged to avoid the federal estate tax.

Estate Size Life insurance both as an absolute value and as a percentage of estate size decreased as estate size increased up to $200,000. At this point, life insurance increased until both relative and absolute values peaked in the $350,000-$399,999 category. It is often thought that larger estates will have an increasing amount of life insurance because large estates can afford higher levels of security and may have more serious liquidity problems if an untimely death occurs. The figures from Table 27 indicate that the hypothesis concerning this relationship is not confirmed.

An alternative hypothesis, viewing life insurance in estate building terms, is that life insurance could comprise a relatively greater part of smaller estates. Except for estates in the $300,000 to $399,999 range,

large estates in the study included smaller relative amounts of life insurance. Perhaps many of those with large estates feel less need for the security offered by life insurance since large estates, by their size alone, infer more security than smaller estates. It may also be that large estate owners, because of the very size of their estates, have given extra attention to the liquidity issue, and thus, are more knowledgeable of other ways to deal with the problem.

Table 27. Life insurance by estate size

Net taxable estate levels	Total life insurance	
	Average amount of insurance ($)	Insurance as a percent of total gross estate (%)
$ 0-$49,999	3,331	14.2
50,000- 99,999	10,885	14.0
100,000-149,999	9,268	7.5
150,000-199,999	8,119	4.3
200,000-249,999	18,522	6.5
250,000-299,999	19,255	6.4
300,000-349,999	63,627	13.6
350,000-399,999	130,065	20.6
400,000 & over	25,980	4.0
OVERALL MEAN	5,851	13.5

Age of Decedent It would be expected that a decedent's age would have an effect on the amount of life insurance held. Older individuals and the very young would be expected to have less insurance because they have less need for security or estate building. Individuals who are middle aged or younger would seem to have more reason for security in that this is the age in which they are frequently rearing children and acquiring business and investment interests.

The relationship between age of decedent and life insurance in Table 28 follows the expected trend. Excluding the "under twenty" age bracket, life insurance increases as age increases through the 41-50 year old bracket. After this point it decreases with increasing age.

Table 28. Life insurance by age of insured decedent

Age level	Total life insurance	
	Average amount of insurance ($)	Insurance as a percent of total gross estate (%)
Legal	3,394	12.9
0-20	8,236	20.0
21-30		14.8
31-40	17,411	29.1
41-50	12,755	33.3
51-60	19,179	16.3
61-70	6,760	17.7
71-80	3,692	11.2
81-90	2,824	7.4
Over 90	4,547	8.9
OVERALL MEAN	5,919	13.5

Occupation of Decedent Retired decedents and housewives owned little life insurance, 5.0 percent and 3.5 percent of their estates, respectively. Such individuals would not be expected to own large amounts of insurance since they have relatively less need for the security offered by life insurance. White collar decedents owned more insurance than blue collar decedents yet less as a percentage of the estate, 14.1 percent versus 16.6 percent respectively (see Table 29). For farmers, life insurance amounted to only 3.5 percent of their estates. The only category that owned less insurance than farmers was retired farmers who owned 1.5 percent.

It might be expected that farmers would own a large amount of life insurance because a large portion of their estates typically consists of illiquid assets. However, the competitive uses for funds available to farmers may be factors that offset this expected relationship.

Table 29. Life insurance by occupation

Occupation Categories	Total life insurance: Average amount of insurance ($)	Total life insurance: Insurance as a percent of total gross estate (%)
Retired	1,918	5.0
Retired farmer	1,183	1.4
Housewife	484	3.5
Farmer	3,274	3.5
Blue collar	7,581	16.6
White collar	10,459	14.1
OVERALL MEAN	3,169	13.5

Marital Status and Sex Married males were found to own a significantly greater amount of life insurance than any other category as shown in Table 30 and 31. This is as expected since males are generally the primary wage earner and married individuals have more reason to insure their lives against interruptions of the income stream. Estates of married and divorced decedents, with 17.5 percent and 13.8 percent comprised of life insurance, included considerably more insurance proceeds on the average than estates of single and widowed decedents who had 6.8 and 3.0 percent, respectively. In addition, estates of males included a mean level of 16.0 percent in life insurance while for estates of females, life insurance comprised only 9.8 percent.

Table 30. Life insurance by marital status

Marital Status	Total life insurance proceeds	
	Average amount of insurance ($)	Insurance as a percent of total gross estate (%)
Married	8,510	17.5
Widow	872	3.0
Single	2,886	6.8
Divorced	5,939	13.8
Not married	8,316	26.0
OVERALL MEAN	5,950	13.2

Table 31. Life insurance by sex

Sex of decedent	Total life insurance proceeds	
	Average amount of insurance ($)	Insurance as a percent of total gross estate (%)
Male	8,566	16.0
Female	2,585	9.8
OVERALL MEAN	6,021	13.4

V. Summary

This article has summarized some of the current dimensions of the intergenerational transfer and estate planning process in Iowa. Recent changes in state and federal tax laws have changed dramatically the "rules of the game" impacting the choice of various estate planning tools. This article has reviewed the key dimension to consider in choosing various estate planning tools and techniques and the actual use of these tools based on a survey of Iowa probate files. The survey results suggest some interesting conclusions.

The data indicate that estates are typically divided among members of the immediate family--spouse and children. Only in 4.7 percent of the estates did charities receive bequests. The small size and frequency of bonds for the fiduciary imply that the bonding procedure appears to serve more as a formality than as a precaution against financial loss. Furthermore, bonds for fiduciaries were more frequent among the smaller estates indicating a possible failure of many decedents of small estates to waive the bonding requirement in their wills or to be unaware of post-death waiver possibilities.

With respect to estate administration, regular administration was used for practically all large estates (net taxable estate value in excess of $130,000), while small estates used this procedure in approximately two-thirds of the cases. In excess of 90 percent of the decedents who had a large estate had a will at their death, and almost two-thirds of those with a small estate also had a will. However, a higher percentage of the wills were admitted to probate in large estates compared to small estates.

This data suggests that more small and large estates have wills than might have been anticipated. Furthermore, there is a higher probability of using a will as the individual grows older--in excess of 65 percent of those decedents 60 years or older at their death had a will. Blue collar

workers were less likely to have a will than white collar workers, and a higher percentage of farmers had wills than either blue or white collar occupational groups.

The length of probate for all estates surveyed averaged 15 months with the most frequent closing date eight months after the decedent's death. Over 60 percent of the estates surveyed were closed within one year of the date of death, and 90 percent were closed within two years of death.

Trusts and legal life estates are considered useful tools in estate planning, but the survey data indicate that neither tool is used to a great extent. Additional opportunities may exist to use a trust or a legal life estate arrangement in developing a complete estate plan.

Joint tenancy has historically been a common estate planning device and still offers some estate planning advantages, particularly in estates not subject to federal and state death taxes. Decedents with larger estates owned a decreasing amount of joint tenancy as a proportion of their total estate. White collar workers and farmers owned a smaller proportion of their estate in joint tenancy compared to blue collar workers. Those in the age bracket of 31-40 years had the highest proportion of joint tenancy of any age category, with almost 50 percent of their total gross estate owned in joint tenancy. The data indicate that joint tenancy usage is still relatively high, and problems such as severance of joint tenancies, large tax liabilities at the death of the surviving joint tenant, and unanticipated distribution of the property to the surviving joint tenant rather than other heirs at death still may exist in many estates.

The use of life insurance to provide liquidity in an estate or to create an estate where none might exist has been well documented. The

results of this survey indicate that life insurance averaged only 13.5 percent of the total estate. The data on ownership and beneficiaries of life insurance suggest that decedents are more concerned with reducing state inheritance taxes and probate costs then in providing additional liquidity to the estate. Life insurance decreased both in absolute value and as a percentage of estate size for estates up to $200,000. For estates above $400,000, life insurance comprised only four percent of the total gross estate. Surprisingly, those with larger estates (except in the $300-400,000 category) owned a much smaller portion of their total estate in the form of life insurance. Although white collar decedents owned more insurance than blue collar decedents, insurance as a percentage of the estate was less for white collar compared to blue collar decedents. Farmers and retired farmers along with housewives owned less than 5 percent of their total gross estate in the form of life insurance. Thus, the liquidity needs of most estates must be satisfied in other ways such as using installment payment provisions and liquidating assets rather than through the use of an insurance program.

The data from this survey provide an explicit indication of the characteristics of decedents in Iowa and the estate plans they are using. Additional data on the taxes paid by decedents with various estates and plans would provide information on the relationships between characteristics of the decedent, estate and estate plan and the incidence of state and federal death taxes. This information would be useful to both estate planners and policy makers who are proposing changes in estate or inheritance tax law. Such tax incidence data were gathered as a part of this study and are reported elsewhere.[84/] Additional surveys of the type reported here should be initiated to determine the changes in estate plans and tax incidence since passage of the Tax Reform Act of 1976.

FOOTNOTES

1. Musgrave, R. and P. Musgrave, Public Finance: In Theory and Practice, 238 (1973).
2. Due, J. and A. Friedlander, Government Finance, Economics of Public Sector (1973). A legacy duty is a tax (originally imposed in England) upon personal property transferred by will or intestate.
3. 39 Stat. 777 (1916).
4. P.L. 94-455, 90 Stat. 1520 (1976).
5. Shoup, C., Federal Estate and Gift Taxes, 477 (1966).
6. Iowa Code Ch. 38 (1921).
7. Iowa Code Ch. 203 (1929).
8. Iowa Code § 450.3 (1977).
9. Iowa Code §§ 633.330 - 633.489 (1977).
10. Iowa Code § 450.22 (1977).
11. Kurtz, S., and R. Reimer, Iowa Estates: Taxation and Administration, Ch. 5 (1975).
12. Iowa Code Ch. 635 (1977).
13. The necessity of probating an estate in order to clear title to property may not become apparent to the heirs or beneficiaries until they attempt to sell or mortgage the decedent's property. This, of course, may often be some time after the date of death.
14. If the estate plan includes a legal life estate or trust, a beneficiary typically receives only a partial interest in the property. The allocation of these partial interests to the various beneficiaries would be almost impossible, so the entire interest was allocated to the life tenant. The

bias introduced by this assumption is not expected to be significant because of the infrequent use of the legal life estate and trust as documented later.

15. Iowa Code § 633.3(1) (1977)

16. See Table 7 and related discussion.

17. Iowa Code §§633.169, .172, .173, .175 (1977).

18. Iowa Code §§633.169, .170, .172, .173 (1977).

19. See earlier discussion of probate on page 3.

20. Iowa § 633.305 (1977).

21. Iowa Code §§ 633.210 - 633.226 (1977)

22. Hines, N. W., Estate Planning: Iowa Joint Tenancies, 45 (University of Iowa Agricultural Law Center Monograph, No. 7, 1965).

23. Even if such an arrangement is successful in obtaining the desired property transfer, the property will still be included in the decedent's estate for tax purposes. See Iowa Code §§ 450.3(2), 450.3(3) (1977).

24. In Re Estate Of Swanson, 239 Iowa 294, 31 N.W.2d 385 (1948).

25. Unfortunately, information from codicils was not obtained in the survey. A codicil may be used to update or change the provisions of a will.

26. However, the data may understate the currency of these estate plans because a codicil may have been used to make appropriate adjustments but was not noted by the survey team. The survey team estimated that codicils were used in less than 10 percent of the total estates surveyed, but may have been included in up to 25-30 percent of the large estates.

27. Iowa Code §§ 450.22, 633.361 (1977).

28. Creditors generally have six months after the date of the second publication of notice to creditors to present their claims. Iowa Code § 633.410 (1977). Thus, estates using regular administration would, of necessity, need to stay open at least this long.

29. For example, estates subject to federal estate tax audit may be held open longer than normal since such audits often take two years or longer to complete.

30. Iowa Code §§ 633.197, 633.198 (1977).

31. Iowa Code § 633.199.

32. Iowa Code § 633.477.

33. Iowa Code § 633.477 (9) (1977).

34. Note, "Contemporary Studies Project: Large Farm Estate Planning and Probate in Iowa," 59 Iowa L. Rev. 794, 822 (1974).

35. Iowa Code § 633.264 (1977).

36. Iowa Code § 633.265 (1977).

37. Iowa Code § 633.294 (1977).

38. Iowa Code § 633.172 (1977).

39. Iowa Code § 633.265 (1977).

40. I.R.C. § 2056.

41. Iowa Code §§ 450.9, .10 (1977).

42. "Family estate" trusts that promise to solve all of an individual's estate planning problems should be approached with caution. See Rev. Rul. 257, 1975-2 Cum. Bull. 251 (grantor treated as owner of the trust and assignment of "lifetime services" to the trust was ineffective to shift tax burden to the trust"; George T. Horvat, T.C. Memo. 1977-104 (same); Douglas H. Damm, T.C. Memo. 1977-194 (same); Richard L. Wesenberg, 69 T.C. No. 89 (1978); Rev. Rul. 258, 1975-2 Cum. Bull. 503 (trust had preponderance of corporate over noncorporate characteristics and so treated as an association taxable as a corporation); Rev. Rul. 259, 1975-2 Cum. Bull. 361 (units of "beneficial ownership" taxed in grantor's estate); Rev. Rul. 260, 1975-2 Cum. Bull. 376 (transfer not subject to federal gift tax).

43. Iowa Code §§ 599.1 (1977); Irwin v. Keokuk Savings Bank & Trust Co., 218 Iowa 477, 255 N.W. 671 (1934).

44. Iowa law provides a procedure in lieu of conservatorship where money due a minor does not exceed $1,000. Iowa Code § 633.574 (1977).

45. Powers of a conservator are regulated by state law. See generally, Iowa Code §§ 633.646, .647 (1977). Trust instruments can be drafted to allow the fiduciary broad management powers. Iowa Code § 633.699 (1977).

46. I.R.C. § 2056.

47. See Harl, N., "How to Use the Marital Deduction to Minimize Estate Taxes at Both Deaths", in Successful Estate Planning Ideas and Methods, Prentice-Hall, Inc., 1977, p. 5161-5167.

48. See Bruce, J. "Coping with the Generation Skipping Tax," 12 Real Prop., Probate and Trust J. 653 (1977); R. Lerner, "New Carryover Basis Rules Radically Alter Planning Techniques for Estate Distributions," 4 Estate Planning 72 (1977); R. Covey, "Generation Skipping Transfers in Trust," in Use of Trusts in Estate Planning - 1977 pp. 329-344 (1977).

49. I.R.C. § 2033; Williams v. United States, 41 F.2d 895 (Ct. Cl. 1930).

50. See Gray, J., The Rule Against Perpetuities (1886).

51. I.R.C. § 2601-2622.

52. Successive estates are created for family members in succeeding generations. Property held in a granted life estate is not taxable in the estate of the deceased life tenant for federal estate tax purposes. In general, for "generation skipping" transfers after April 30, 1976, a federal estate tax is imposed with respect to "skipped" heirs substantially equivalent to the tax that would have been imposed had the property been transferred outright rather than to the skipped heir for life. I.R.C. § 2601. An exemption is provided for generation skipping transfer

involving children up to $250,000 of principal per child. I.R.C. § 2613 (b) (6). The tax, if due, is computed largely as though the property involved had been added to the estate of the individual skipped in the transfer. See I.R.C. § 2602(a). The tax, however, is paid out of the proceeds of the trust property, if held in trust, although the trust would be entitled to any unused part of the "skipped" person's unified credit, the credit for tax on prior transfers, the charitable deduction if applicable, the credit for a part of state inheritance or estates tax paid and a deduction for expenses of estate administration. See I.R.C. §§ 2602(c), 2613(b) (7).

53. Iowa Code § 633.699 (1977).

54. See Note, "Contemporary Studies Project: Large Farm Estate Planning and Probate in Iowa," 59 Iowa L. Rev. 794, 853 n. 670 (1974).

55. See generally, Iowa Code §§ 633.63-633.204 (1977).

56. See Iowa Code § 633.699 (1977).

57. In Re Bucklin's Estate, 243 Iowa 312, 51 N.W.2d 412, (1952).

58. Roorda v. Roorda, 230 Iowa 1103, 300 N.W. 294 (1941).

59. See I.R.C. § 641.

60. See, e.g., Johnston, E. and D. Garrett, "Sweeping Changes in Rules of Accumulation Trusts Partially Unscramble Tax Computations," 4 Estate Planning 142 (1977); M. Moore (ed.), Use of Trusts in Estate Planning: 1977, (1977).

61. An outright gift in fee of the personal property may be desirable even if a legal life estate is to be used for the real property.

62. Iowa Code § 599.2 (1977).

63. As a general rule, the life tenant must, at his or her own expense, make such repairs as are necessary to preserve the property, to prevent waste,

and to keep the estate as nearly as practical in the condition in which it was received. Harris v. Brown, 184 Iowa 1288, 1295, 169 N.W. 664, 666-67 (1918) (dictum). See Iowa Code § 658.1 (1977) (treble damages for waste by the life tenant). A life tenant is not bound to make extraordinary repairs or valuable improvements. See Biddick v. Darragh, 246 Iowa 518, 68 N.W. 2d 285 (1955). If the life tenant makes such repairs or improvements, he or she is not entitled to reimbursement from the remainderpersons. Shelangoswki v. Schrack, 162 Iowa 176, 143 N.W. 1081 (1913). Compare Mahon v. Mahon, 254 Iowa 1349, 1354-55, 122 N.W. 2d 103, 107 (1963) (dictum) (life tenant could collect for enhanced value by reason of improvements constructed "in good faith").

64. The life tenant has the power to lease the property for a term of years, from month to month or at will as a concomitant of the general power to alienate his or her life interest. See 1 American Law of Property § 2.17(c) (Casner ed. 1952). However, a lease entered into with a life tenant generally expires immediately upon the death of the life tenant and all rights of the lessee are extinguished except the right to remove the tenant's property within a reasonable time. Ray v. Young, 160 Iowa 613, 142 N.W. 383 (1913). See Scurry v. Anderson, 191 Iowa 1058, 183 N.W. 585 (1921). See also Egbert v. Duck, 239 Iowa 646, 32 N.W. 2d 404 (1948). Legislation has been enacted by the Iowa General Assembly to continue farm leases after death of the life tenant as lessor until the following March 1 (and for an additional year if death of the life tenant occurred after September 1). Parallel provisions were enacted for non-farm leases. H.F. 433, Acts of 67th Iowa General Assembly (1978).

65. In general, no duty is imposed on the life tenant to keep the premises insured for the benefit of the reversioner or remainderpersons. Each has an insurable interest which can be protected if desired. See 1 American Law of Property § 2.23 (Casner ed. 1952).

66. On the death of the first of the joint tenants to die, it is possible in all but about a half dozen states for the title obtained by the surviving joint tenant to be perfected by short-form probate proceedings. E.g., Iowa Code § 450.22 (1977); Kan. Stat. Ann. § 59-2286 (Supp. 1974). See Marshall, Iowa Title Opinions and Standards Ann. §§ 3.2(F), 12.1(C) (1963). See Sheard, "Avoiding Probate of Decedent's Estates," 36 Cinn. L. Rev. 70, 82 (1967); Rollison, "Co-ownership of Property in Estate Planning," 37 Notre Dame L. 608, 629 (1962).

67. Rollison, supra at 629. See e.g. Wood v. Logue, 167 Iowa 436, 149 N.W. 613 (1914); Musa v. Segelke & Kohlhaus Co., 224 Wis, 432, 272 N.W. 657 (1937); In re Smulyan, 98 F. Supp. 618 (M.D. Pa. 1951) (attempt by trustee in bankruptcy to obtain series E savings bonds owned by bankrupt and spouse with survivorship rights). See Annot., 111 A.L.R. 171 (1937). See Hines, "Real Property Joint Tenancies: Law, Fact, and Fancy," 51 Iowa L. Rev. 582, 597 (1966). Debtors, in general, seem not to have pressed this apparent advantage of joint tenancy. Some states by statute, have come to the aid of creditors in permitting them to follow nonexempt joint tenancy property into the hands of the survivor. See, e.g., Neb. Rev. Stat. § 30-624 (1965) surviving joint tenant liable to extent of amount contributed by the deceased joint tenant if other property of deceased is not sufficient to pay debts). S.D. Comp. Laws Ann. ch. 30-21A (Supp. 1975). Compare Conn. Gen. Stat. Rev. § 47-147f (Supp. 1967)(mechanics lien, judgment lien, attachment or execution may continue to be effective after death of joint tenant).

68. See generally, Iowa Code §§ 633.210 - 633.230 (1977).

69. Note the dates when wills were executed in the previous discussion.

70. Hines, N. W., Estate Planning: Iowa Joint Tenancies, 45 (University of Iowa Agricultural Law Center Monograph, No. 7, 1965).

71. For example, where real estate is owned by joint tenants who unite in entering into a contract for its sale, the contract effects an equitable conversion and a destruction of the joint tenancy. Iowa Land Title Examination Standards 4.11 (1974); also, Hines, N. W., Estate Planning: Iowa Joint Tenancies, 45 (University of Iowa Agricultural Law Center Monograph, No. 7, 1965).

72. For a joint tenancy in real property created after December 31, 1954, in a husband and wife by one of the spouses, a taxable gift does not result at the time of the transfer unless the donor elects to treat the transfer as a gift. Treas. Reg. § 25.2515-1(b) (1958). Contribution is defined in terms of "money, other property or an interest in property." Treas. Reg. § 25.2515-1(c)(1)(i)(1958).

73. I.R.C. § 2040(b). The creation of husband-wife joint interests in land is not subject to gift tax unless so reported on a gift tax return timely filed. See I.R.C. § 2040(b)(2)(b)(ii).

74. I.R.C. § 2040(a).

75. Treas. Reg. § 20.2040-1(a)(2) (1958). It should be noted that the death tax burden on the death of the first joint tenant to die is generally no greater than if the property had been owned solely by the decedent, however, and left to the survivor by will or intestate succession. In husband-wife joint tenancies, involving property used in a family business to which they both contributed effort, a substantial question has existed over the taxability of assets at the husband's death survived by the wife. See

e.g. Estate of Ensley, T.C. Memo. 1977-402. A recent Tax Court case permitted one-half the value to be excluded where mortgages were paid from the income from the farm's operations, evidence showed the couple worked as a "husband and wife team", and under local law income from jointly owned property between husband and wife belonged to the spouses in equal shares. Estate of Otte, T.C. Memo 1972-76. Compare Estate of Silvester, T.C. Memo, 1977-439 (residential rental property).

76. Iowa Code § 450.3(5) (1977). This code section now automatically excludes one-half of the value of jointly held property of a husband and wife. Iowa Code § 450.3(5)(1977).

77. Generally, federal estate taxes and Iowa inheritance taxes are due 9 months and 12 months respectively after the date of death, I.R.C. § 6151; Iowa Code § 450.6 (1977).

78. Both Iowa and federal law allow for deferred payments in certain cases. See Iowa Code §§ 450.6, 450.44, 450.46, 450.47 (1977); I.R.C. §§ 6161, 6163, 6166, 6166A.

79. See Harl, N., Farm Estate and Business Planning Ch. 5 (4th ed. 1978).

80. See, e.g., Iowa Code § 511.37 (1977) (proceeds of life insurance not to exceed $15,000 exempt to surviving widow). See also Iowa Code § 633.333 (1977) (mutual aid or benevolent society policies).

81. Since Iowa Code § 633.197(1977) limits the fees of the estate's fiduciary and attorney to an amount based upon the gross assets for Iowa inheritance tax purposes, insurance payable to a named beneficiary is not taken into account in computing the ceiling limitation because it is excluded as an asset of the estate for Iowa inheritance tax purposes. See In re Estate of Brown, 205 N.W.2d, 925, 926 (1973) (proceeds of policies not subject

to Iowa inheritance tax if passing to children under Iowa Code § 511.37 (1977).

82. In Re Estate of Brown, 205 N.W.2d 925,926 (1973).

83. The federal estate tax gross estate includes insurance proceeds payable to the estate, and proceeds payable to others from policies in which the decedent retained "incidents of ownership." I.R.C. § 2042. These include, for example, the right to change beneficiaries or borrow on the policy. Treas. Reg. § 20.2042-1(c) (1958).

84. Achterhof, J. "Analysis of Relationships Between Death Taxes and Selected Characteristics of Probated Estates", unpublished manuscript, Department of Economics, Iowa State University, Ames, Iowa. 1977